

DISTRICT COURT, WELD COUNTY, COLORADO Court Address: 901 9 th Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632 Phone Number: (970)-475-2400	DATE FILED September 23, 2026 5:02 PM CASE NUMBER: 2026CV30878
In re Records Request Dated May 27, 2026 Applicant: TOWN OF HUDSON and concerning: Interested Party: KUSA Channel 9 a/k/a 9NEWS	
<p style="text-align: center;">ORDER GRANTING 9NEWS' MOTION TO DISMISS</p>	

THIS MATTER comes before the Court on Interested Party KUSA Channel 9 d/b/a 9NEWS's *Motion to Dismiss Application*, filed on August 21, 2026. Applicant Town of Hudson ("the Town" or "Hudson") submitted a *Response* and the Interested Party ("9News") filed a *Reply*.

THE COURT having reviewed the file and arguments of counsel hereby **FINDS** as follows:

BACKGROUND

The Town of Hudson experienced disciplinary problems with two of its employees, the Police Chief and a lieutenant with the police department. The Town Manager issued notices of pre-disciplinary meetings to both. Within a week, both had resigned from the Town. On May 15, 2026, 9News requested the employees' resignation letters, and the Town released them. On May 27, 2026, 9New requested the pre-disciplinary letters or notices sent to the employees. On June 1, 2026, the Town denied the request, citing the "[p]ersonnel files" exemption under C.R.S. § 24-72-204(3)(a)(II) and the deliberative process privilege at C.R.S. § 24-72-204(3)(a)(XIII). 9News responded in writing with its disagreement to the claimed exemptions. On July 9, 2026, the Town wrote back that it has "reconsidered its denial and stands by its decision" as set forth in its June 1 letter.

9News took no action to compel disclosure of the requested documents. On July 23, 2026, the Town initiated this action by filing its *Application Permitting the Town of Hudson to Restrict Disclosure of Certain Documents Pursuant to Colo. Rev. Stat. §§ 24-72-204(3)(a)(II), 24-72-*

204(3)(a)(XIII) and 24-72-204(6)(a) of the Colorado Open Records Act, Colo. Rev. Stat. § 24-72-200.1, et seq. 9News responded by filing this *Motion to Dismiss Application*.

ISSUES

- I. Whether Applicant's has stated a plausible claim for relief based on its assertion that the Court should restrict disclosure of records based on the personnel file exemption to the Colorado Open Records Act.
- II. Whether Plaintiff has stated a plausible claim for relief based on its assertion that the Court should restrict disclosure of records based on the common law deliberative process privilege under the Colorado Open Records Act.
- III. Whether Plaintiff has stated a plausible claim for relief based on its assertion that the Court should restrict disclosure because it would do substantial injury to the public interest pursuant to C.R.S. § 24-72-204(6)(a).

LEGAL STANDARDS

Motion to Dismiss Under C.R.C.P. 12(b)(5)

The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the formal sufficiency of the complaint. *Lobato v. State*, 218 P.3d 358, 367 (Colo. 2009). The Court must accept all factual allegations contained in a complaint as true, viewing them in the light most favorable to the plaintiff. *Norton v. Rocky Mountain Planned Parenthood, Inc.*, 409 P.3d 331, 334 (Colo. 2018). However, the Court is not bound to accept averments which contain legal conclusions or “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678; see *Warne v. Hall*, 373 P.3d 588, 595–96 (Colo. 2016) (finding that the pleading standard in Colorado was the “plausibility standard” that the Supreme Court set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). The Court views motions pursuant to C.R.C.P. 12(b)(5) with disfavor and will dismiss a claim or claims only when the factual allegations in the complaint do not, as a matter of law, support the claim for relief. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011) (citing *Bly v. Story*, 241 P.3d 529, 533 (Colo. 2010)). In other words, when the factual allegations in a complaint state a plausible claim for relief, the Court will deny a motion to dismiss pursuant to C.R.C.P. 12(b)(5). *Warne*, 373 P.3d at 595. But “[t]hreadbare recitals of the elements of a cause of action, supported by mere

conclusory statements, do not suffice,” and “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 678–79 (internal citations and quotations omitted).

When passing on a motion to dismiss a complaint, the court may only consider the allegations stated in the complaint, “documents attached as exhibits or incorporated by reference, and matters proper for judicial notice.” *Denver Post*, 255 P.3d at 1088.

ANALYSIS

Colorado has established a statutory framework known as the Colorado Open Records Act (CORA) for accessing public records, which rests on the principle that members of the public have a right to know about their public officials’ conduct. C.R.S. §§ 24-72-200.1 to 205.5; *see also Migoya v. Wheeler*, 2024 COA 124, ¶ 1, 564 P.3d 1052, 1054. Under this statutory framework, custodians of public records may deny requests for access to records for nineteen discrete exceptions appearing in the statute. *Id.* (citing § 24-72-204(3)(a)(I)-(XXIII), C.R.S.). There is an additional catch-all exception which applies when “in the opinion of the official custodian” of a requested public record, “disclosure of the contents of [the] record would do substantial injury to the public interest.” *Id.* (citing § 24-72-204(6)(a), C.R.S.).

The decision whether to disclose public records can become a complicated and uncertain task. Despite the guidance offered by the Legislature that government records should be generally open to public inspection and the recitation of specifically enumerated exceptions, it is impossible for the Legislature to anticipate every factual scenario concerning requests for public records. For this reason, the Legislature adopted C.R.S. § 24-72-204(6)(a), which enables the official custodian of any public record to apply to the district court for an order permitting him or her to restrict disclosure of the record or to determine if disclosure is prohibited for one of two reasons: (1) “disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection”, or (2) “if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2.”

Applicant initiated this case by claiming three separate and distinct bases for the relief

sought. The first two bases clearly do not apply and are addressed in summary fashion. The third basis requires a more detailed analysis.

First Basis—Personnel File Exemption

As discussed above, the statute authorizing an official custodian to apply to the district court for review of whether disclosure is prohibited or required, recites only two bases. Neither of the two bases involves the official custodian's prior decision to withhold records from disclosures based on the personnel file exemption found at § 24-72-204(3)(a)(II), C.R.S. Here, the custodian of records made the decision to withhold the records based on application of the personnel files exemption to the general rule favoring disclosure. 9News has not challenged that decision. The Town is not authorized under C.R.S. § 24-72-204(6)(a) to apply for a determination of whether the official custodian correctly applied the personnel file exemption.

Second Basis—Deliberative Process Privilege

As discussed above, the statute authorizing an official custodian to apply to the district court for review of whether disclosure is prohibited or required, recites only two bases. Neither of the two bases involves the official custodian's prior decision to withhold records from disclosures based on the deliberative process privilege found at § 24-72-204(3)(a)(XIII), C.R.S. Here, the custodian of records made the decision to withhold the records based on application of the deliberative process privilege to the general rule favoring disclosure. 9News has not challenged that decision. The Town is not authorized under C.R.S. § 24-72-204(6)(a) to apply for a determination of whether the official custodian correctly applied the deliberative process privilege. In fact, C.R.S. § 24-72-204(3)(a)(XIII) describes a specific process for asserting that disclosure may cause "substantial injury to the public interest," but that process requires that the party who requested the records to request that the official custodian apply to the district court for a determination on substantial injury. 9News made no such request to the official custodian in this case. Accordingly, the Town cannot rely upon C.R.S. § 24-72-204(3)(a)(XIII) as the legitimate authority for its Application.

Third Basis—Substantial Injury to the Public Interest

The argument that release of the disputed public records "would do substantial injury to the public interest" is a valid basis on which the Town may assert that the Court should authorize the

withholding of public records. However, 9News contends the Town improperly raised this request and argument. Essentially, 9News argues that the Town is using its application as an improper request for declaratory relief to avoid an action by 9News that could trigger an award of attorney's fees, if 9News prevailed. Moreover, 9News points out that while it disagrees with the Town's decision to withhold the pre-disciplinary notices that it has not initiated any action challenging the Town's decision.

9News argues the Town relied on the personnel files exemption and deliberative process privilege in its letters denying the 9News request for disclosure. On the other hand, the Town observes it cited the "substantial injury" basis in its *Application*, thereby giving it an independent basis on which to seek judicial relief. The Court does not find that either argument is dispositive.

The Court of Appeals has recognized that C.R.S. § 24-72-204(6)(a) effectively creates a right to file a declaratory judgment action by filing a separate independent action in the district court. *Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 312 (Colo. App. 2004). At the same time, the Court of Appeals stated it "recognize[s] the potential for abuse if records custodians are allowed to file declaratory judgment actions simply to avoid or delay having to comply with a legitimate CORA request." *Id.* 9News does not complain that the Town is abusing the process to delay disclosure here but instead complains that the Town has already made the decision to deny disclosure based on the first two grounds and is abusing the process by racing to the courthouse for preemptive judicial approval of a CORA denial. *See Reply* at 3.

The Court makes no findings as to the Town's intent, but the Court agrees with 9News that the Town's request for declaratory judgment is premature because no legal determination has been issued by a court on whether the personnel files exemption or deliberative process privilege apply. 9News made a request for the pre-disciplinary notices. The Town denied the request, citing two exceptions to disclosure under CORA. 9News expressed its disagreement in writing. The Town issued a written statement that it stood by its decision. The status of the records is that the Town's official custodian has denied the request for disclosure. No court has ordered the records disclosed. Therefore, the Town's remedy contemplated under C.R.S. § 24-72-204(6)(a) is neither necessary nor available.

If 9News were to file an action seeking disclosure on the basis that the records were neither personnel files nor subject to the deliberative process privilege and 9News prevailed and obtained an order for the release of the public records, then the Town would have the right to apply to the

district court in a separate independent action seeking a declaration that “disclosure of the contents of said record would do substantial injury to the public interest.” The Town cited both *Gumina v. City of Sterling*, 119 P.3d 527 (Colo. App. 2004) and *Migoya v. Wheeler, supra*. Neither case is directly on point because they were decided on different grounds. Nevertheless, both contain guidance on the proper procedure. In *Gumina*, the Court of Appeals stated, “[i]f the court orders that the records should be open to public inspection, the official custodian of public records may then apply to the district court to restrict disclosure if such disclosure would do substantial injury to the public interest.” *Id.* at 532 (citing C.R.S. § 24-72-204(6)(a)). The *Migoya* opinion noted that the trial court followed the same procedure and then permitted the political subdivision (a public school district) to file an application to restrict access to the subject records, premised on the “substantial injury to public interest” exception contained in C.R.S. § 24-72-204(6)(a). The *Migoya* opinion decided a different legal issue, but the Court of Appeals did not disapprove of the trial court’s decision to follow the procedure proscribed in *Gumina*.

This Court finds and concludes that the procedure described in *Gumina* is the proper procedure to follow when pursuing an application pursuant to C.R.S. § 24-72-204(6)(a) where the “substantial injury” basis for withholding is alleged. First, reserving “substantial injury” as a last resort rather than a first resort argument preserves precious judicial resources and party resources. If “substantial injury” is a first resort argument, then every official custodian who denies a request for disclosure would be entitled to file an application for judicial review to validate his or her decision whenever there is a basis to believe that release of the public records “would do substantial injury to the public interest.” Such a practice has the potential to unnecessarily consume significant judicial resources and time. In many instances, a requesting party may be satisfied with the official custodian’s decision to refuse disclosure on the grounds stated, which begs the question of why trial courts should adjudicate a matter not in controversy. Second, permitting an official custodian to use “substantial injury” as a first resort argument will force many requesters into a defensive litigation posture when the requester may have no intent to litigate the official custodian’s decision. Here, 9News disagrees with the Town of Hudson’s decision to apply the personnel files exemption and deliberative process privileges, but 9News did not file an action seeking a ruling that the Town misapplied the exceptions in this case. Thus, 9News has been involuntarily forced to litigate based merely on its act of having made a request for records. Third, it remains to be determined whether the Town properly asserted either the personnel files exemption or the deliberative process privilege.

If its assertion of these exceptions to disclosure was proper, then CORA provides that the public records need not be disclosed. Before any district court declares whether release of the records “would do substantial injury to the public interest,” a court must first assess whether the Town’s original bases for denial—personnel files exemption and deliberative process privilege—have any application in this case. This is the process identified in *Gumina*. It is the process used by the trial court and noted by the appellate court in *Migoya*. This Court agrees with 9News that it is the proper process based on the factual allegation in this case.¹

Since 9News has not made any challenge to the Town’s denial of 9News’ CORA request and no court has concluded that the personnel files exemption and deliberative process privilege do not apply in this situation, the Town lacks any plausible basis for asserting the “substantial injury” claim under C.R.S. § 24-72-204(6)(a) to withhold disclosure of public records. Simply put, the records at issue face no present threat of public disclosure and, therefore, the Town is not entitled to assert “substantial injury” under C.R.S. § 24-72-204(6)(a) to prevent a disclosure that has never been authorized or ordered. 9News is entitled to dismissal of the Town’s Application.

CONCLUSION

For the reasons explained above, the Court **GRANTS** 9News’ *Motion to Dismiss Application*.

Dated: September 23, 2026

By Order of the Court:



SHANNON D. LYONS
DISTRICT COURT JUDGE

¹ The Town also cites *Jefferson County Education Association v. Jefferson County School District R-1*, 2016 COA 10, 378 P.3d 835, in the same section that it discusses *Gumina* and *Migoya*. *Jefferson County* declined to address the substantial injury arguments and instead focused on the question of whether certain records qualified as personnel files. However, just like *Gumina*, the *Jefferson County* decision observed, “[i]f the documents are not part of the teachers’ personnel files, then the question of whether they implicate a legitimate expectation of privacy becomes a component of a *different* analysis, which is whether disclosing them would do substantial injury to the public interest.” As discussed in this *Order*, the Town has already determined the records are part of the subject police officers’ personnel files, and that decision has not been challenged.

